

WGB/lmm/Doc#1910853

4623-08006

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OTIS ELEVATOR,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:08-cv-01107
)	
EMERSON ELECTRIC CO. d/b/a)	Judge Ronald A. Guzman
U. S. ELECTRICAL MOTORS, INC.,)	Magistrate Judge Sidney I. Schenkier
)	
Defendant.)	

**MOTION OF DEFENDANT, EMERSON ELECTRIC CO., FOR LEAVE TO
DEFER THE FILING OF ITS THIRD-PARTY COMPLAINT**

NOW COMES the defendant, Emerson Electric Co. ("Emerson"), by and through its attorneys, John W. Bell and William G. Beatty; Johnson & Bell Ltd., of counsel, and moving this Honorable Court for the entry of an order granting said defendant leave to defer the filing of its third-party complaint pending the completion of the ongoing field investigation in this matter, here states as follows:

1. At a status hearing held in this matter July 16, 2008, one of the then-defendants in this case, Champlain Cable Corporation ("Champlain"), was dismissed without prejudice pursuant to the agreement of the parties. Champlain had been alleged in the plaintiff's Complaint to have made an unauthorized (and undiscovered) substitution of the type of wiring utilized in the lead wires of certain electric motors manufactured and sold by defendant Emerson to plaintiff Otis Elevator Company ("Otis") between September 2004 and September 2006, with said substitution allegedly resulting in certain field failures in a number of the motors.

2. It was determined through the parties' investigation, and to the satisfaction of the plaintiff, Otis, that Champlain was not responsible for the unauthorized substitution of the

wiring, and it was therefore agreed among the parties that Champlain be dismissed from this matter without prejudice. The Court was advised at the time of the requested dismissal of Champlain that investigation was underway that might lead to the filing of a third-party complaint by Otis against another entity, depending upon the results of an ongoing field investigation presently being undertaken jointly Otis and Emerson.

3. The Minute Order entered by the Court on July 25, 2008 relative to the July 16 hearing directs Emerson, among other things, to file its contemplated third-party complaint by July 31, 2008. The Order also requires the joinder of additional parties to this case by September 15, 2008, in accordance with the proposed Scheduling Order submitted by the parties and adopted by the Court.

4. Defendant Emerson respectfully requests leave to defer the filing of its third-party complaint from July 31, 2008 to at least September 15, 2008, so as to allow for the completion of its ongoing field investigation with Otis, which will determine what other entities, if any, should be joined as third-party defendants.

5. A potential third-party defendant in this matter, EIS, Inc., has been advised of the plaintiff's claims in this matter, and is expected to cooperate with the parties in order that a good-faith determination of their involvement may be made prior to their joinder as a third-party defendant in this matter.

6. The requested deferral of the filing of Emerson's third-party complaint will not impact any of the other dates or deadlines previously established by the Court, and will not impair the progress of this case, nor prejudice any party.

WHEREFORE, the defendant, Emerson Electric Co., respectfully prays for the entry of an order granting said defendant leave to defer the filing of its third-party complaint in accordance with the terms of this motion.

Respectfully submitted,

s/ William G. Beatty

William G. Beatty Bar Number: 03121542

Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

s/ William G. Beatty

William G. Beatty Bar Number: 03121542

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